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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

FRAZ001

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Application Number

10/731,280

Filed

12/09/2003

First Named Inventor

John S. Frazee

Art Unit

3752

Examiner

Hogan, James Sean

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☒ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☐ attorney or agent of record.
Registration number _____

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

Signature

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Typed or printed name

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Telephone number

December 9, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☐ Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.8. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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JOHN FRAZEE
Anti-clogging Showerhead Device
Application No. 10/731,280
Docket No. FRAZ001

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sirs,

Showerhead Clogging from the hard water minerals calcium and magnesium carbonate is found throughout the United States. The present invention eliminates the problem. Claims 1, 3, 6, 10, 11 and 15-17, which define an anti-clogging showerhead device, are rejected under 35 U.S.C. (a) as unpatentable over U.S. Patent No. 3,962,773 to Parry in view of U.S. Patent No. 2,629,393 to Langdon. Applicant believes that errors and omissions exists in the prima facie case in support of rejection and submits the following for the Board's consideration:

ARGUMENTS AND REMARKS:

1) Applicant respectfully notes that modifying Parry's showerhead with Langdon's valve does not address the problem solved by Applicant's invention, e.g., the prevention of showerhead clogging by eliminating the cause: calcium and magnesium carbonate deposits (lime scale) which notoriously clog spray holes. Instead, the Office Action of 10/13/2006 introduces a totally different type of clogging material together with a method of prevention. Termed "microbiological particles", it is living organic matter which grows in the stagnant water contained within the Parry/Langdon system. This growth may "clog

part of the showerhead device”.

The two types of clog are disparate. Calcium and magnesium carbonate are minerals which build up in the spray holes on the outside. Microbiological particles are organic matter which apparently clogs on the inside. The two accrete in different places, in different ways, at different rates and under different conditions. Applicant submits that the newly introduced clog only serves to distance Parry/Langdon's system from Applicant's invention.

2) Prevention of the microbiological articles which (as the Examiner suggests) grow within the Parry/Langdon system requires the employment of Parry's temperature responsive valves. These valves are designed to bleed excessively hot or near freezing water, as required in Parry's device. They would be superfluous in Applicant's showerhead system and clearly inappropriate in a residential setting. Beyond that, the combination as proposed actually would serve to keep Parry's system from performing as required. In this regard, the Honorable Pre-Appeal Review Panel is directed to Applicant's prior response of July 17, 2006, specifically, page 15, lines 2-19; page 16, lines 1-6.

On the other hand, Applicant's anti-clogging device allows full drainage of water within the fixture after use, thus avoiding unwanted evaporation which would lead to the formation and build-up of lime scale clogging. An even, full-pressure spray head results, assuring great showers every time, year after year.

3) Applicant's invention is unique, as determined by prior art searches. The Office Action describes the combination of Parry's showerhead device modified by Langdon's one-way valve as anticipating Applicant's device. Applicant understands that the references themselves, rather than the Applicant's patent application, must suggest the combination but Applicant was unable to find any suggestion (express or implied) in either Parry's or Langdon's patent that they be combined.

4) At the time Applicant's invention was made, why might its simple technology not have been "obvious" to at least one of the millions of shower takers plagued by clogged showerheads? Among them would have been numerous scientists and engineers having ordinary skill in the art, yet apparently none figured out how to eliminate clogging (which Applicant did in one epiphanic moment). As applied to Applicant's invention, is this not a sterling example of "unobviousness"?

5) The U.S. Supreme Court [383 U.S. 1 (1966)] made clear in *Graham v. Deere* that objective circumstances must be taken into account when deciding whether an invention is or isn't obvious. Specifically mentioned are: a long-felt but unsolved need; and failure of others to come up with the invention. Applicant's invention clearly qualifies on both counts as secondary considerations.

6) Other factors to be taken into account for determining unobviousness are: improvement in a crowded field; a new physical feature (apertured vacuum-breaking check-valve) which produces a new result; succeeding where others have failed (Applicant's is the only anti-clogging device extant which PREVENTS clogging instead of just treating it AFTER it occurs); successfully implementing an ancient, but not implemented, idea (perfect clog-free showers for everyone every time).

7) Not to be overlooked is a new and unexpected 'green effect' which would result from wide dissemination of Applicant's product: millions of clogged showerheads now discarded yearly would be saved from becoming landfill. Additionally, a clog-free showerhead is inherently water-friendly - - the spray pattern is not wastefully skewed in several directions.

References:

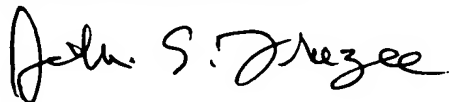
85% of American homes have hard water (USG survey); "Clogging is a common problem . . . the main reason for replacement." (Grohe America); In the year 2000, 13.2 million showerheads were sold in the U.S. (CCI/Traid).

SUMMARY

Applicant's device eliminates showerhead clogging by preventing the formation of calcium and magnesium carbonate deposits (lime scale) which notoriously clog spray channels. Parry's device modified by Langdon's valve fails to address this problem. Furthermore, to a practical event, the proposed combination (Parry/Langdon) essentially destroys the

usefulness of Parry's device. Applicant believes the arguments herein are substantive and place the above-identified utility application in favorable condition for allowance.

Respectfully submitted,

A handwritten signature in black ink, reading "John S. Frazee". The signature is written in a cursive style with a large initial "J" and a stylized "F".

John S. Frazee, Inventor